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No. 646

IN THE

Supreme Court of the United States

PETER S. SARELAS,

Petitioner,

vs.

GEORGE S. PORIKOS, JOHN C. GEKAS, GEORGE W. ALEXANDER, ANDREW CARDARAS, THEMIS ANAGNOST, DEMOSTHENES I. GEORGOULIS, DEMETRIOS PARRY, ADAMANTIOS ANDROUTSOPOULOS, JAMES P. ECONOMOS, GERARD A. SERRITELLA, PHILLIP S. MAKIN, CHARLES V. FALKENBERG, CATHERINE C. ANAGNOST, and JOHANNA E. FETHERSTON,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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Petitioner Pro Se.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The petitioner, Peter S. Sarelas, prays that a Writ of Certiorari be issued to review the final judgment of the United States Court of Appeals for the Seventh Circuit. Petitioner's timely Petition for Rehearing in the United States Court of Appeals for the Seventh Circuit was denied on September 4, 1963.

OPINION BELOW.

The opinion of the Court of Appeals is reported in full in 320 F. 2d 837. It is printed herein as Appendix A.

Documents Transmitted with Petition.

Certified copies of the following filed in the United States Court of Appeals for the Seventh Circuit, with nine (9) additional copies:

1. Petitioner's Brief and Appendix.
2. Respondents' Brief and Appendix.
3. Petitioner's Reply Brief.
4. Petitioner's Petition for Rehearing.
   (No Answer was filed by Respondents to Petitioner's Petition for Rehearing).
5. Certified copy of Opinion rendered by the United States Court of Appeals for the Seventh Circuit.
6. Certified copy of the Judgment of Court of Appeals, entered on July 30, 1963.
7. Certified copy of the Order entered on September 4, 1963, denying Petition for Rehearing.

JURISDICTION.

The final judgment of the United States Court of Appeals for the Seventh Circuit, affirming the dismissal by the District Court, was entered on July 30, 1963 (Appendix B, *infra*, page 28). The petitioner filed a timely petition for rehearing, which was denied on September 4, 1963 (Appendix C, *infra*, page 29).

The petitioner therefore invokes the jurisdiction of this Court under 28 U.S.C.A. Section 1254(1).

The petitioner invokes this Court's power of supervision over the lower Federal courts because the Court of Appeals for the Seventh Circuit, in the petitioner's case, has so far departed from the accepted and usual course of judicial proceedings; as follows:

1. Although the District Court refused to entertain petitioner's suit and a District Judge, in fact, threatened and intimidated the petitioner so as to deny the petitioner the right of access to the District Court, the Court of Appeals nonetheless passes upon the merits of petitioner's suit for the first time as if the Court of Appeals were a trial court.

2. The Court of Appeals has affirmed a void judgment. Although the record on appeal shows that the petitioner was not permitted to defend himself or his property against the District Judge's Order dismissing the case *with costs*, the Court of Appeals disregards the void foundation of such judgment.

3. The Opinion of the Court of Appeals relies upon, and adopts and recites unproven allegations from outside the record and adopts and relies upon supposed facts *directly opposite* to the record on appeal, thus denying the petitioner due and orderly procedures in the Court of Appeals. (See, Certified copy of Petition for Rehearing in the Court of Appeals, pp. 2-10).

4. The Court of Appeals sanctions a departure by the District Court from the accepted and usual course of judicial proceedings. Although the record on appeal shows that the District Judge refused to entertain petitioner's suit and intimidated and threatened the petitioner to leave, the Court of Appeals says such action is not a denial of a hearing and not an arbitrary action. (Appendix A, *infra*, page 27).

QUESTIONS PRESENTED.

1. Whether the District Judge could refuse to entertain petitioner's lawsuit when the petitioner sought to invoke the jurisdiction of the District Court under the Civil Rights Acts, 42 U.S.C.A. Section 1981 *et seq.*, claiming substantial injury, under color of state law, to his right to the equal protection of the laws and relying upon the due process and privileges and immunities clauses of the Fourteenth Amendment.

2. Whether this Court will use its supervisory power over the lower federal courts to restrain the district judge who denied petitioner the right of access to the district court by intimidation, insult, and abuse.

3. Whether the respondents, misusing the state compulsory deposition power and clothed with the authority of state law, are subject to the sanctions of 42 U.S.C.A. Section 1983.

4. Whether the respondents who, under the guise of a deposition, perpetrated frauds upon the petitioner and upon the Illinois state courts so as to obstruct the due course of justice in Illinois and who injured petitioner in his reputation and his property because petitioner attempted to enforce his right to the equal protection of state laws, are subject to the sanctions of 42 U.S.C.A. Section 1985(2).

5. Whether two or more of the respondents, in furtherance of a natural conspiracy, being at the same time petitioner's opponents and also state court appointed Deposition Examiners, who conspired, as "constituted authorities", to deprive the petitioner of the equal protection of the laws, are subject to the sanctions of 42 U.S.C.A. Section 1985(3).

6. Whether the Court of Appeals when the record on appeal shows that the petitioner was denied the right of access to the district court by intimidation, insult, and abuse, can pass for the first time upon the merits of petitioner's case as if the Court of Appeals were a trial court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A.) Amendment XIV to the Constitution of the United States, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

B.) Title 42, U. S. Code Annotated, Section 1983:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State * * *, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

C.) Title 42, U. S. Code Annotated, Section 1985(2):

> " * * * if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State * * *, with intent to deny to any citizen the

equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person * * * to the equal protection of the laws;"

D.) Title 42, U. S. Code Annotated, Section 1985(3):

"If two or more persons in any State * * * conspire * * * for the purpose of preventing or hindering the constituted authorities of any State * * * from giving or securing to all persons within such State * * * the equal protection of the laws; * * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

STATEMENT OF THE CASE.

The petitioner seeks to hold State Court Deposition Examiners, and those that collaborated with them, liable for the misuse of the power the respondents possessed by virtue of a State Court Order and made possible *only* because the respondents were clothed with the authority of the Illinois State compulsory deposition power. The respondents, armed with the Court Order and clothed with the state compulsory deposition power, perpetrated frauds upon the petitioner under color of law, and under color of Illinois customs, practices, and usages. (App. 7-19; Rec. 8-29).

Under Illinois customs, practices, and usages, and particularly in Cook County, Illinois, the deposition is not to assist in the ascertainment of the truth, but rather to assist in reducing the huge backlog of civil lawsuits in the State Courts of Cook County. The compulsory deposition power is wielded against deponent-litigants under the color and pretense of law, as a weapon of intimidation to beat down litigation and to force plaintiffs to abandon their lawsuits. Under Illinois custom, practice, and usage, both a defendant and his attorney can be appointed State Court Deposition Examiners. The deposition, under Illinois custom, practice, and usage, is without supervision and is held in a private enclosure, away from the courthouse. In addition, under Illinois customs, practices, and usages, the State Court Deposition Examiner is in charge of the deposition and the notary public, who is usually also a court reporter, merely attends to take stenographic notes.

Under color of these Illinois customs, practices, and usages, and under the guise and pretext of taking the petitioner's deposition, the respondents committed, condoned, caused to be done, acquiesced in, the following overt acts in furtherance of a conspiracy to obstruct justice in the

State Courts of Cook County, Illinois, and to deprive the petitioner of due process and equal protection of the laws, and to damage the petitioner in his person and property for attempting to enforce the equal protection of the laws:

1. Although the petitioner had not waived examination of the transcript of the depositions taken and had not waived his signature, such transcript was not submitted to the petitioner for examination and signature. (App. 10; Rec. 11).

2. Such transcript was nonetheless used as an instrument to intimidate the petitioner and had attached to it a false certificate of a supposed deposition officer, Thomas J. Sheehan, who was in fact not present at all of the depositions and was not the deposition officer as he falsely certified. Such false certificate stated: "the said transcript accurately state the questions put and the answers made". (App. 11-12, 15; Rec. 13, 16). An additional false certificate was attached to an additional document of "excerpts, quotations or portions", prepared by respondents and such document contained:

(a) at least fifty-five (55) false representations and designations of the said Sheehan, labeling him as "The Court".

(b) More than one hundred (100) separate statements or remarks made by the said Sheehan, consisting of his supposed rulings, striking petitioner's answers, changing petitioner's answers, and abusive and derogatory statements against the petitioner, when, in fact, said Sheehan was not even present at all of the depositions and was not the deposition officer.

(c) Omissions, changes, and deletions of petitioner's answers.

(d) Inclusion of questions without including petitioner's answers thereto.

(e) Omissions of plaintiff's numerous objections.

(f) Omission of the exhibits mentioned therein.

(g) Findings of fact by said supposed deposition officer, Sheehan, against the petitioner, when, in fact, the said Sheehan was not even present at some of the depositions. (See, App. 13-14, par. 12, "a" through and including "g"; Rec. 15-16).

3. The "excerpts" of depositions were presented to the State Court by the respondents, in their capacity as both Deposition Examiners and defendants in the State Court lawsuit in which the depositions were taken. Such presentation of the "excerpts" to the State Court was to defeat the due course of justice in Illinois, and to defame and disparage the petitioner by destroying his reputation and his credibility. The respondents caused such "excerpts" to be presented, knowing that the falsely and illegally certified transcript contained a multiplicity of omissions, deletions, and insertions, ingeniously designed and fraudulently inserted in such transcript to discredit and oppress the petitioner for having attempted to enforce, in the state courts, his right to the equal protection of the laws. (App. 14-18; Rec. 16-20).

4. Such presentation of fraudulently begotten "excerpts" was used to damage the petitioner in his property by causing a State Court judgment to be entered against the petitioner, without a hearing on the merits, resulting in great damage and expense to the petitioner for having attempted to enforce the equal

protection of the laws. The petitioner was thus hindered, intimidated, obstructed, and prevented from enforcing his right to the legal remedies in the state courts of Illinois. (App. 18, 19; Rec. 19, 20-21).

5. None of the respondents made any effort to prevent or aid in preventing the commission of the wrongs against the petitioner. (App. 18; Rec. 19-20).

The petitioner instituted action in the District Court on June 21, 1962, with Jury Demanded, and sought to invoke the jurisdiction of the District Court under 28 U.S.C.A., Sections 1343 and 1331, and sought to invoke the sanctions of 42 U.S.C.A. Sections 1983, 1985(2), 1985(3), 1981, 1986, 1988, and the sanctions of 18 U.S.C.A. 241 and 242. Petitioner's case arises under the United States Constitution and particularly Amendment XIV, Section 1, and the laws of the United States as aforementioned.

A District Judge, however, refused to entertain petitioner's lawsuit.

> "The Court: * * * This court will not entertain such." (See, Official Transcript of Proceedings, App. 117; Rec. 221).

The petitioner, appearing *pro se*, was not permitted to speak or to finish a sentence. The District Judge, or more accurately, the person pretending to be such judge, intimidated, insulted, and abused the petitioner for attempting to invoke the jurisdiction of the District Court and denied the petitioner the right of access to the District Court by threat and intimidation:

> "The Court: Mr. Marshall, take this gentleman out if he doesn't go out." (Official Transcript of Proceedings, App. 118; Rec. 221).

The District Judge entered a judgment on the pleadings against the petitioner when there was nothing before the District Judge. The respondents' Motion for a judgment on the pleadings was noticed to be presented on *October* 19, 1962, yet the District Judge, with nothing before him, entered a judgment against the petitioner on *October* 9, 1962. (App. 113; Rec. 186-187. App. 116; Rec. 216). The District Judge entered a baseless judgment directly opposite the record. Such order states:

> "* * * having heard the arguments of counsel * * * " (App. 116, lines 6-7; Rec. 216).

Yet, the Official Transcript of Proceedings shows that the petitioner, appearing *pro se*, was not allowed to speak or address the court on any subject and was threatened and intimidated to leave: "Mr. Marshall, take this gentleman out if he doesn't go out." (App. 118; Rec. 221).

The District Judge entered such judgment *with costs*, yet the petitioner was not permitted to defend himself against such judgment when and where he was being assailed, as the Official Transcript of Proceedings plainly shows. (App. 116, line 16; Rec. 216. App. 116-118; Rec. 220-221).

The Court of Appeals, ignoring the void and illegal foundation of the judgment of the District Court, passed upon the merits of petitioner's case at the same time affirming dismissal. Yet, the District Judge had refused to entertain petitioner's suit and obviously did not pass upon the merits of petitioner's claim when the petitioner was threatened and intimidated to leave.

Reasons for Granting the Writ.

I.

The petitioner's case involves the misuse of the state compulsory deposition power by State Court Deposition Examiners and collaborators, respondents here, to perpetrate frauds upon the petitioner. Another case pending in this Court involves the misuse of the state compulsory deposition power to perpetrate another type of tort—torture and injury—inflicted upon a deponent-litigant, *Skolnick* v. *Martin et al.*, No. 427, October Term, 1963.

In affirming the dismissal of petitioner's case, the Court of Appeals relies upon its decision in the *Skolnick* case, 317 F. 2d 855 (Appendix A, *infra*, p. 27). The Court of Appeals indicates that the respondents in the petitioner's case were *not* under color of law. But this ruling is clearly contrary to decisions by this Court:

> "* * * the provisions of the (Fourteenth) Amendment as conclusively fixed by previous decisions are generic in their terms, are addressed, of course, to the states, *but also to every person, whether natural or juridical, who is the repository of state power.* By this construction the reach of the Amendment is shown to be coextensive with *any exercise by a state of power, in whatever form exerted*" *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U.S. 278, 287, 33 S. Ct. 312, 314, 57 L. Ed. 510. (Emphasis added).

> "*Misuse of power*, possessed by virtue of state law and made possible *only* because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law." *United States* v. *Classic*, 313 U.S. 299, 326, 61 S. Ct. 1031, 1043, 85 L. Ed. 1368. (Emphasis added).

The definition of 'under color of' state law as in the *Classic* case was adhered to by this Court in *Screws* v. *United States*, 325 U.S. 91, 108-113, 65 S. Ct. 1031, 1038-1041, 89 L. Ed. 1495; in *Williams* v. *United States*, 341 U.S. 97, 99, 71 S. Ct. 576, 578, 95 L. Ed. 774; and adhered to and reaffirmed, in *Monroe* v. *Pape*, 365 U.S. 167, 183-185, 81 S. Ct. 473, 482-483, 5 L. Ed. 2d 492.

As the Illinois Supreme Court said of Illinois depositions taken pursuant to law:

> "They are the product of the *power of the State* to compel the testimony of witnesses *rather than of the ingenuity of any lawyer*. The State makes available its compulsory process to compel witnesses to attend and give testimony on a pretrial deposition in order to assist in the ascertainment of the truth." *McGill* v. *Illinois Power Co.*, 18 Ill. 2d 242, 246, 163 N.E. 2d 454, 457 (November, 1959). (Emphasis added).

This view by the Illinois Supreme Court was reaffirmed in *Tansor* v. *Checker Taxi Co.*, 27 Ill. 2d 250, 188 N.E. 2d 658, 662-663 (March, 1963).

The Court of Appeals waives away petitioner's case by characterizing it as an "abuse of process in the taking of the depositions" (Appendix A, *infra*, p. 27).

But it has been said:

> "* * * the settled construction of the (Fourteenth) Amendment is that it presupposes the possibility of an abuse by a state officer or representative of the powers possessed, and deals with such a contingency. It provides, therefore, for a case where one who is in possession of state power uses that power to the doing of the wrongs which the Amendment forbids, even although the consummation of the wrong may not be within the powers possessed, *if the commission of the wrong itself is rendered possible or is efficiently aided by the state authority lodged in the wrongdoer.*" *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U.S. 278, 33 S. Ct. 312, 315. (Emphasis added).

In addition, although it is necessary to allege that the respondents were "under color of" state law to make them subject to the sanctions of 42 U.S.C.A. Section 1983, it is *not* necessary to allege "under color of" law to set forth a cause of action under 42 U.S.C.A. Section 1985 (2)(3). The petitioner in his Complaint sets forth allegations of the overt acts of respondents clothed with the State compulsory deposition power and thus "under color of" law, and allegations of overt acts of respondents in furtherance of a conspiracy to obstruct justice in the State Court, and to injure the petitioner for having enforced, or attempted to enforce, the equal protection of the laws. (App. 7, pars. 8, 9, 10, 11; Rec. 8-9. App. 8, pars. 13, 14; Rec. 9-10).

The Court of Appeals decision in petitioner's case is not only clearly contrary to previous rulings by this Court about "under color of" law, but the decision is clearly contrary to the legislative debates preceding the passage of the Ku Klux Act, April 20, 1871, Section 2, now Section 1985(2). The petitioner's position is that the overt acts of the respondents *were* "under color of" law, but overt acts of a combination of persons in furtherance of a conspiracy to obstruct justice, etc., *need not* be "under color of" law to be subject to the sanctions of 42 U.S.C.A. Section 1985(2). Even if the respondents were only "individuals", they would be subject to the sanctions of Section 1985(2):

> "Who dare say, now that the Constitution has been amended, that the nation cannot by law provide against all such abuses and denials of right as these in State and by States, or *combinations of persons?* * * * If I am not right in asserting that the negative limitations imposed by the Constitution on States *can be enforced by law against individuals* and States, then the Government was wrong from the administra-

tion of Washington down, and the Supreme Court of the United States was wrong every time the question has come before it." Statement of Representative J. A. Bingham of Ohio (March 31, 1871), Congressional Globe, 42nd Congress, 1st Session, Appendix 85. (Emphasis added).

"If the refusal of a State officer, acting for the State, to accord equality of civil rights renders him amenable to punishment for the offense under United States law, *conspirators who attempt to prevent such officers from performing such duty are also clearly liable.*" Statement of Representative H. C. Burchard of Illinois (April 6, 1871), Congressional Globe, 42nd Congress, 1st Session, Appendix 315. (Emphasis added).

This Court should grant certiorari and resolve the Federal questions inherent in petitioner's case as to the applicability of 42 U.S.C.A. Section 1985(2), and whether "under color of" law is, or is not, a necessary allegation to invoke the sanctions of that section.

II.

Can it be said, without making a mockery of justice, that the misuse of state compulsory deposition power by State Court Appointed Deposition Examiners and collaborators, to perpetrate frauds upon a deponent-litigant in order to obstruct justice and to injure him in his person, or property, for attempting to enforce the equal protection of the laws—can it be said that such acts by the respondents are not within the sanctions of the Civil Rights Acts? The misuse of the Illinois state compulsory deposition power is carried out by way of a "natural" conspiracy. Under Illinois customs, practices, and usages the State Court Deposition Examiners are partisans—they are on other occasions attorneys for the opponents of the deponent-litigant. It is only natural that the opponents,

being at the same time the State Court Appointed Deposition Examiners, "the constituted authorities", should or would conspire, to see to it that the deponent-litigant is denied the equal protection of the laws. For example, a plaintiff at a deposition as both a witness and a litigant, looks to the Deposition Examiner for the equal protection of the laws. But, under the Illinois customs, usages and practices, and particularly those customs, practices, and usages of Cook County, the Deposition Examined is not an impartial person but a partisan, representing defendants on other occasions. What equal protection of the laws would such a constituted authority grant to such a plaintiff? Logically, none. Under Illinois custom, usage and practice, the State Court Appointed Deposition Examiner is in charge of the deposition and the deposition is taken without supervision. The notary-court reporter attends merely to take stenographic notes.

As a result of and under color of such customs, practices, and usages, outrages are performed and such ourtages have the majesty of law. At depositions, fist fights are not uncommon, though perhaps not widely reported, and the intimidation and abuse of deponent-litigants serves the cynical purpose to assist in reducing the huge backlog of cases in Cook County by forcing deponent-litigants to abandon their lawsuits, by torment, injury, and fright. Under Illinois customs, practices and usages, and most particularly the customs, practices, and usages of Cook County, the compulsory deposition power is wielded especially by organized malefactors, as an instrument of wrongdoing to beat down litigation. The State Courts, in Cook County, deny protective orders as a matter of routine. Under Illinois customs, practices, and usages, this fearsome power is put into the hands of partisans as agents of government, theoretically "to assist in the ascertain-

ment of the truth" (*McGill* v. *Illinois Power Co.*, 18 Ill. 2d 242, 246, 163 N.E. 2d 454, 457)—but actually to beat down litigation, to reduce the huge backlog of lawsuits, which nevertheless grows because of such misuse and lawlessness. Frauds are committed under pretense of law (petitioner's case). Physically disabled deponent-litigants are further injured (*Skolnick* v. *Martin*, No. 427, Oct. Term, 1963) and all these odious wrongs, under pretense of authority.

An accused person can be brought to testify and he has, by settled law and by the Constitution, liberty against torture, liberty against coercion. Can it be said that a deponent-litigant at a civil court deposition has no liberty against partisans acting as agents of government? No. Constitutional safeguards? No available Federal sanctions? This Court should grant certiorari and resolve this Federal Constitutional question, so that the Federal Constitutional safeguards and sanctions are clearly available to civil court deponent-litigants who are injured, in their persons or in their property, by combinations of persons in furtherance of conspiracies to obstruct justice, to defeat the integrity of judicial process and to destroy the public's confidence in the Courts.

If deponent-litigants can be oppressed, defrauded and deprived of the equal protection of the laws, with impunity —this undermines the entire judicial system. Is a citizen any less a Federal citizen because he was compelled, by state compulsory power wielded by partisans, to attend a deposition? Protection is the very purpose of the national government.

As one Congressman said in the legislative debates preceding the passage of the Ku Klux Act (now 42 U.S.C.A. Section 1983 and Section 1985):

> "American citizenship has but little worth if this law cannot be passed. How idle my declaration, I am

> 'an American citizen,' if all the rights which are seemingly part and parcel of my possession as such a citizen may be at the mercy of assassins and the Government have not the right to protect me! *I do not wish to be told that I must look to my State for protection.* The Government claims my allegiance, and my life when it is in danger; why should it not protect me in these rights, for which that life may be given up?" Statement of Representative Dunnell of Minnesota (April 4, 1871), Congressional Globe, 42nd Congress, 1st Session, Appendix 262. (Emphasis added).

III.

In petitioner's suit the Court of Appeals indicates that the petitioner's Federal lawsuit is barred by a supposed adjudication in the state courts. Yet, the petitioner was never heard on the merits of his claim in the state court, nor is petitioner's present suit the same as the state court lawsuit referred to in the Court of Appeals Opinion (Appendix A, *infra*, p. 26).

> "Whether there is 'color' of state law is a *federal*, not a state question." *Marshall* v. *Sawyer*, 9 Cir., 301 F. 2d 639, 646 (1962). (Emphasis added).

It is not relevant to mention a state remedy as precluding a federal civil rights remedy:

> "It is no answer that the State has a law which *if enforced* would give relief. *The federal remedy is supplementary to the state remedy*, and the latter need not be first sought and refused before the federal one is invoked." *Monroe* v. *Pape*, 365 U.S. 167, 183. (Emphasis added).

IV.

A plaintiff in a Civil Rights Act suit (petitioner) should not have to run a gauntlet of intimidation, insult, and "trial by ordeal" under the guise and pretense of judicial proceedings in the lower Federal courts. A citizen should

not be subjected to such oppression simply because he attempted to enforce his Civil Rights by filing a lawsuit in the Federal District Court in the district in which he resides. This Court should grant certiorari and use its supervisory power over the lower Federal courts and make a clear pronouncement that the Fifth Amendment prohibits such as the following oppressions under the pretense of judicial proceedings:

1. In the District Court, a hostile District judge, or more accurately a person pretending to be a District judge, in non-judicial acts, denied the petitioner the right of access to the District Court by intimidation, abuse, and insult. When petitioner attempted to present a motion (App. 116-117; Rec. 220) in the District Court petitioner was not allowed to be heard or to address the presiding judge, or person pretending to be the presiding judge. The petitioner was not allowed to finish any sentence. The person pretending to be District Judge declared he would not entertain petitioner's lawsuit:

> "The Court: * * * This court will not entertain such." (See, Official Transcript of Proceedings, App. 117; Rec. 221).

And then the petitioner was threatened, insulted, and intimidated to leave:

> "The Court: Mr. Marshall, take this gentleman out if he doesn't go out." (See, Official Transcript of Proceedings, App. 118; Rec. 221).

2. In the District Court, assailing a citizen (petitioner) in his property by dismissing his lawsuit *with costs*, but not allowing such citizen to speak or be heard when and where he is being assailed in his rights. (App. 116, line 16; Rec. 216).

3. In the District Court, judgment was entered on the pleadings when there was nothing before the District Judge. Respondents' Motion for judgment on the pleadings was noticed to be presented a day *after* the District Judge, or person pretending to be District Judge entered the judgment against the petitioner. (App. 116-118; Rec. 219-222).

4. A District Judge, or person pretending to be such judge, entered a judgment against the petitioner when there was nothing before the District Judge. The District Judge's Order states "having heard the arguments of counsel" (App. 116, lines 6-7; Rec. 216). Yet, the Official Transcript of Proceedings shows that the petitioner, appearing *pro se*, was not allowed to speak and instead was intimidated and insulted by the District Judge, or person pretending to be the District Judge.

> "The Court: Mr. Marshall, take this gentleman out if he doesn't go out." (App. 118; Rec. 221).

The judgment was without foundation, baseless, and directly opposite to the record. No amount of patchwork can make such a void judgment a valid judgment.

5. In the Court of Appeals, recitals are made in their written Opinion *directly opposite* the Record on Appeal. (See, Petition for Rehearing, pp. 4-7).

6. The Court of Appeals considered matters outside the record and relied upon and recited the same in their written Opinion, thus enabling the respondents to perpetrate a fraud upon the Court of Appeals. The petitioner pointed this out to the Court of Appeals, but to no avail. (See, Petition for Rehearing, page 19).

7. The Court of Appeals passed upon the merits of petitioner's suit, when petitioner was not heard on the merits of his claim in the District Court—in fact, not heard at all. The District Judge refused to entertain petitioner's suit. "Mr. Marshall, take this gentleman out * * *." (App. 118; Rec. 221).

8. The Court of Appeals caused the recitals *directly opposite* the record, and from outside the record, to be published (in unofficial reports), thus defaming and disparaging the petitioner. (320 F.2d 827).

The judgment of the Court of Appeals is baseless, without foundation, an affirmation of a void judgment. (Petition for Rehearing in Court of Appeals, pp. 11-13). No amount of patch-work can make it valid.

If this Court will not grant certiorari and will not use its supervisory power over the lower federal courts in the 7th Circuit—then what does it avail a person that he is a law-abiding citizen? If the lower federal courts abdicate their duty and will not give remedy, then where is the citizen to protest? If the District Court in his district is closed to this petitioner, where shall he seek redress?

What good are Civil Rights Acts when the right of access to the District Court is denied? It surely cannot be doubted that the action of the District Judge, or the person pretending to be such, amounts to a trespass.

> "Indeed, reasonable access to the courts is basic to all other rights protected by the (Civil Rights) Act, for it is essential to their enforcement." *Stiltner* v. *Rhay*, 9 Cir., 322 F.2d 314, 316 (Sept. 9, 1963).

V.

The Court of Appeals' ruling in petitioner's case is directly opposite to rulings in other Circuits and directly opposite to rulings by this Court.

A. The District Judge said he would not entertain such a lawsuit as petitioner's. (App. 117; Rec. 221). The Court of appeals said, "* * * we see no denial of hearing, or arbitrary action * * *." (Appendix A, *infra*, page 27). This ruling is in direct conflict with other rulings:

(1) "In refusing to consider appellants' complaints, the district court considers the case from a viewpoint *exactly contrary* to this obvious purpose of the civil rights legislation to give the litigant his choice of a federal forum rather than that of the state." *Romero* v. *Weakley*, 9 Cir., 226 F.2d 399, 401 (1955). (Emphasis added).

(2) In direct conflict with:

"Intimating no view on whether the plaintiff should ultimately prevail, *we hold that it was error for the District Court to dismiss the complaint without holding a hearing to determine the facts.*" *Lee* v. *Hodges*, 4 Cir., 321 F.2d 480, 483 (1963). (Emphasis added).

"From his complaint it is evident that he claims substantial injury, under color of state law, at least to his right to the equal protection of the laws; and he also appears to rely upon the due process and the privileges and immunities clauses of the Fourteenth Amendment. Federal jurisdiction over this complaint is well founded *and the possible existence of state remedies does not affect this jurisdiction.* (Citing *Bell* v. *Hood*, 327 U.S. 678, 66 S.Ct. 773, 90 L.Ed. 939, 1946; *Monroe* v. *Pape*, 365 U.S. 167, 183, 81 S.Ct. 473, 5 L.Ed. 2d 492, 1961; *McNeese* v. *Board of Education*, 373 U.S. 668, 83 S.Ct. 1433, 10 L.Ed. 2d 622, 1963; *Moss* v. *Jones*, 288 F.2d 342, 344, 6 Cir., cert. denied, 368 U.S. 868, 82 S.Ct. 98, 7 L.Ed 2d 65, 1961)." 321 F.2d 480, at 484. (Emphasis added).

"The defendants contend that the case concerns a matter of purely internal state business which should be handled by the courts of the state. * * * It is noteworthy that the basis for abstention * * * *has been undercut by recent action of the Supreme Court.*" (Citing *Johnson* v. *Virginia*, 373 U.S. 61, 83 S.Ct. 1053, 10 L.Ed. 2d 195, 1963; *George* v. *Clemmons*, 373 U.S. 241, 83 S.Ct. 1296, 10 L.Ed. 2d 409, 1963; *Wood* v. *Vaughan*, 321 F.2d 480, 4 Cir., 1963). *Lee* v. *Hodges*, 4 Cir., 321 F.2d 480, at 484 footnote 6. (1963). (Emphasis added).

(3) In direct conflict with *Bell* v. *Hood*, 327 U.S. 678, 681-683, 66 S.Ct. 773, 775-776, 90 L.Ed. 939.

(4) In direct conflict with *Monroe* v. *Pape*, 365 U.S. 167, 180, 183, 81 S.Ct. 473, 480, 482, 5 L.Ed.2d 492.

(5) In direct conflict with *McNeese* v. *Board of Education*, 373 U.S. 668, 83 S.Ct. 1433, 1435-1436, 1437, 10 L.Ed 2d 622.

(6) In direct and complete conflict with:

"*The right to a hearing on the merits* of a claim over which the court has jurisdiction is of the essence of our judicial system, and the judge's feeling that the case is probably frivolous does not justify bypassing that right." *Harmon* v. *Superior Court*, 9 Cir., 307 F.2d 796, 798 (1962). (Emphasis added.)

B. The Court of Appeals indicates that the respondents were not "under color of" law. This ruling is in direct conflict with other rulings.

(1) In direct conflict with *Ex Parte Virginia*, 100 U.S. 339, 346-347, 25 Ed. 676, 679.

(2) In direct conflict with *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U.S. 278, 287, 33 S.Ct. 312, 314, 57 L.Ed. 510.

(3) In direct conflict with *United States* v. *Classic*, 313 U.S. 299, 326, 61 S.Ct. 1031, 1043, 85 L.Ed. 1368.

(4) In direct conflict with *Screws* v. *United States*, 325 U.S. 91, 108-113, 65 S.Ct. 1031, 1038-1041, 89 L.Ed. 1495.

(5) In direct conflict with *Williams* v. *United States*, 341 U.S. 97, 99, 71 S.Ct. 576, 578, 95 L.Ed. 774.

(6) In direct and complete conflict with *Monroe* v. *Pape*, 365 U.S. 167, 171-172, 81 S.Ct. 473, 476, 5 L.Ed.2d 492.

(7) In direct conflict with *Marshall* v. *Sawyer*, 9 Cir., 301 F.2d 639, 646 (1962).

(8) In direct conflict with *Baldwin* v. *Morgan*, 5 Cir., 251 F.2d 780, 788 (1958).

(9) In direct conflict with *Stringer* v. *Dilger*, 10 Cir., 313 F.2d 536, 540 (1963).

C. The Court of Appeals indicates that the petitioner was not deprived of "any rights * * * secured by the Constitution and laws * * *." (Appendix A, *infra*, page 27). This ruling is in direct conflict with other rulings.

(1) In direct conflict with:

> "In our view *Monroe* v. *Pape* announces the rule that an allegation of a purpose to discriminate or a purpose to deprive one of any federal right, is *not essential to the statement of a claim under Sec. 1983 predicated on an alleged violation of the due process clause of the Fourteenth Amendment.*" *Cohen* v. *Norris*, 9 Cir., 300 F.2d 24, 29 (1962). (Emphasis added).

CONCLUSION.

For the reasons above stated it is respectfully submitted that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

PETER S. SABELAS,
Petitioner, Pro Se.

APPENDIX A

In the

United States Court of Appeals

For the Seventh Circuit

No. 14011 SEPTEMBER TERM, 1962 APRIL SESSION, 1963

PETER S. SARELAS,
Plaintiff-Appellant,

vs.

GEORGE S. PORIKOS, JOHN C. GEKAS, GEORGE W. ALEXANDER, ANDREW CARDARAS, THEMIS ANAGNOST, DEMOSTHENES I. GEORGOULIS, DEMETRIOS PARRY, ADAMANTIOS ANDROUTSOPOULOS, JAMES P. ECONOMOS, GERARD A. SERRITELLA, PHILIP S. MAKIN, CHARLES V. FALKENBERG, CATHERINE C. ANAGNOST, and JOHANNA E. FETHERSTON,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

July 30, 1963

Before DUFFY, KNOCH, and KILEY, *Circuit Judges.*

KILEY, *Circuit Judge.* Sarelas appeals from a District Court judgment dismissing his suit against fourteen defendants under the federal Civil Rights Acts.[1]

[1] Plaintiff invokes 28 U.S.C. § 1343, 42 U.S.C. §§ 1981, 1983, 1985, 1986, 1988.

The basis of Sarelas' suit is an earlier action in the Circuit Court of Cook County. The Circuit Court dismissed the conspiracy and defamation charges, and entered summary judgment against Sarelas on an assault and battery charge. The Supreme Court of Illinois dismissed his appeal and the Supreme Court of the United States denied certiorari. 370 U.S. 904.

The suit at bar charges the fourteen defendants, thirteen of whom are Illinois attorneys, with conspiracy, while acting under color of Illinois law, to deprive plaintiff of due process and equal protection of the laws, in the Illinois Circuit Court action. The nub of the overt acts he charges, pursuant to the alleged conspiracy, is abuse of process in procuring, having certified and presenting to the Circuit Court his depositions taken by virtue of a Circuit Court order.

Affidavits in support of defendants' motions to dismiss and for summary judgment state that the same claims of irregularities and abuses in taking depositions were presented to the Circuit Court and passed upon by that court; and that the same claims were made to the Supreme Court of Illinois and on petition for certiorari before the United States Supreme Court. These sworn statements were not denied by Sarelas in his counter-affidavit.

Sarelas contends the District Court violated his constitutional rights in denying him a hearing and dismissing his suit without a motion to dismiss having been presented and without an inquiry.

There was no genuine issue of fact before the District Court upon the Circuit Court findings and judgment, which are final because plaintiff's appeal to the Supreme Court of Illinois was dismissed. Thus a question of law only was presented to the District Court and the record shows the question was extensively briefed by plaintiff.

His motions were called for hearing and the District Court presumably was satisfied on the complaint, motions, affidavits and briefs, that oral arguments were not needed for decision. The judgment entered was based upon motions filed, and the exhaustive briefs, and we see no denial of hearing, or arbitrary action, under the circumstances. Rule 78 F.R.C.P., *Skolnick* v. *Martin*, ... F. 2d ..... (7th Cir. 1963). It is not important that plaintiff's and not defendants' motions triggered the disposition of the case. There is no merit to the contention that the District Court denied plaintiff due process or equal protection of the law so as to render the District Court judgment void.

The vital question is whether the District Court erred in dismissing the complaint for failure to state a cause of action upon which relief can be granted under the Civil Rights' Acts. We think not.

This court has recently held that lawyers participating in private state court litigation do not act under color of state law within the meaning of the Federal Civil Rights Acts. *Skolnick* v. *Martin*, ... F. 2d ..... (7th Cir. 1963).

Moreover, taking the facts alleged in the complaint as true, there is no basis for an inference that the defendants, acting "under color of any" state statute, deprived plaintiff of "any rights * * * secured by the Constitution and laws * * * ." Whether there were violations of the Illinois Supreme Court rules on discovery procedure did not present a question of deprivation of "any rights * * * secured by the Constitution and laws * * * " but a question of abuse of process in the taking of the depositions.

For the reasons given, the judgment is AFFIRMED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX B

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago 10, Illinois

Tuesday, July 30, 1963

Before
HON. F. RYAN DUFFY, *Circuit Judge*
HON. WM. G. KNOCH, *Circuit Judge*
HON. ROGER J. KILEY, *Circuit Judge*

PETER S. SARELAS,

Plaintiff-Appellant,

No. 14011 vs.

GEORGE S. PORIKOS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

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This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this day.

APPENDIX C

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago 10, Illinois

Wednesday, September 4, 1963

Before
HON. F. RYAN DUFFY, *Circuit Judge*
HON. WIN G. KNOCH, *Circuit Judge*
HON. ROGER J. KILEY, *Circuit Judge*

PETER S. SARELAS,
Plaintiff-Appellant,

No. 14011 vs.

GEORGE S. PORIKOS, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

IT IS ORDERED by the Court that the petition for a rehearing of this cause be, and the same is hereby, DENIED.